

REMARKS

Claims 1-3, 5-8 and 20-27 are pending. The Examiner's reconsideration of the rejections is respectfully requested in view of the remarks.

Applicant notes that the present Office Action has been made Final. The Final Office Action is believed to be premature; Claims 1-3 and 5 were each amended in the previous amendment. Accordingly, all claims of the new application are not drawn to the same invention claimed in the earlier application. Referring to particularly to Claim 1, the amendment added the limitation that changes in the retail price of the product based are determined on the retail sales state information of said product. This limitation further distinguishes Claim 1 from the prior art in that the prior art references teach methods which determine offers without regard to a current retail charge, much less changes in a retail price. Therefore, at least Claim 1 is drawn to a different invention. Accordingly, withdrawal of the finality of the Office Action is respectfully requested.

Claims 1-3, 5-8 and 20-25 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Herz et al. (US Patent App. 2001/0014868) in view of Kaminsky et al. (2001/0047308). The Examiner stated essentially that the combined teachings of Herz and Kaminsky teach or suggest all the limitations of Claims 1-3, 5-8 and 20-25.

Claims 1 and 5 are the independent claims.

Respectfully, the teachings of Herz and Kaminsky are not believed to be combinable. An auction, as taught by Kaminsky, is typically not considered to be a "offer" in contract law; rather

an auction is typically an invitation to bargain. In that sense the teachings of Herz and Kaminsky are not combinable as the proposed combination would change the principle of operation of the marketing and sales systems of Kaminsky by swapping the obligations of the parties to any sale (offeror and offeree). Thus, the teachings of the references are not sufficient to render the claims *prima facie* obvious.

Assuming, *arguendo*, that the references may be combined, the combined teachings of Herz and Kaminsky fail to teach all the limitations of Claims 1 and 5.

Claim 1 claims, *inter alia*, “price setting means for dynamically setting a current retail price of said product in accordance with rules that specify conditions and parameters to determine changes in the retail price of the product based on the retail sales state information of said product; and product information provision means for, upon the receipt of an information request regarding said product from a user via said communication network, furnishing the user with product information concerning said product and said current retail price of said product.”

Claim 5 claims, *inter alia*, “information provision means for, upon the receipt of an information request regarding said digital content from a user via said communication network, furnishing the user with digital content information concerning said digital content and said current retail charge for accessing said digital content.”

Herz teaches a method for selecting offers that are likely to result in profitable sales based on methods for predicting which offers a current consumer would be likely to accept (see paragraph [0037]). Herz does not teach or suggest how to “product information provision means for, upon the receipt of an information request regarding said product from a user via said communication network, furnishing the user with product information concerning said product

and said current retail price of said product” as claimed in Claim 1, nor “information provision means for, upon the receipt of an information request regarding said digital content from a user via said communication network, furnishing the user with digital content information concerning said digital content and said current retail charge for accessing said digital content” as claimed in Claim 5. Herz uses input including profiles, identity and goals of a shopper (see paragraph [0029-0036]). Herz processes the profile data so as to make customized offers to the current customer (see paragraphs [0003] and [0237]). Nowhere does Herz teach or suggest that “said current retail price of said product” or “said current retail charge for accessing said digital content”, essentially as claimed in Claims 1 and 5, respectively. Consider that the price offered to the current customer of Herz is selected specifically for that customer based on profile, identity, and goals, however none of the information used by Herz includes a current retail price or charge. Further, Herz selects multiple offers to present to the current customer. In Claims 1 and 5, the current retail price is determined based on retail sales state information, which is a history of sales/accesses. Further, a current customer’s current request is not included in the determination of the price - for example, such that fluctuations in the price due to mere inquiries (without actual purchases) are avoided. Nowhere does Herz teach or suggest a method which does not offer a price based on the current customer. Therefore, Herz fails to teach or suggest all the limitations of Claims 1 and 5.

Kaminsky teaches a system for liquidating inventory using an auction (see Abstract). Kaminsky teaches a pricing strategy having a demand price and a buyer auction scheme (see Abstract), which operates at a level below a retail price. For example, see paragraph [0030], where a consumer is presented with a retail price and a current price - it is the current price that is determined by Kaminsky, which is different than the predetermined retail price. Further,

Kaminsky's prices are determined after receiving a number of bids - the prices are determined directly based on bids (see for example, paragraphs [0051-0056]). Thus, similar to Herz, nowhere does Kaminsky teach or suggest a method which determines a price based on history rather than on the current bidders - "retail sales state information of the product comprises a history of retail sales" (see Claim 1), "wherein sales state information of the digital content comprises a history of accesses" (see Claim 5). Therefore, Kaminsky fails to cure the deficiencies of Herz.

The combined teachings of Herz and Kaminsky teach a system for communicating price information to a customer based on profiles, identities, goals, and bids. The combined teachings of Herz and Kaminsky fail to teach or suggest providing a current retail price, much less "product information provision means for, upon the receipt of an information request regarding said product from a user via said communication network, furnishing the user with product information concerning said product and said current retail price of said product" as claimed in Claim 1, nor "information provision means for, upon the receipt of an information request regarding said digital content from a user via said communication network, furnishing the user with digital content information concerning said digital content and said current retail charge for accessing said digital content" as claimed in Claim 5.

Claims 2-3 and 20-23 depend from Claim 1. Claims 6-8 and 24-25 depend from Claim 5. The dependent claims are believed to be allowable for at least the reasons given for Claims 1 and 5. Reconsideration of the rejection is respectfully requested.

Claim 26 is believed to be allowable over the combined teachings of Herz and Kaminsky.

Claim 26 claims, *inter alia*, “price setting means for dynamically setting a current retail price of said product upon completion of each sale in accordance with rules that specify conditions and parameters to determine changes in the retail price of the product based on the retail sales state information of said product.”

The combined teachings of Herz and Kaminsky are directed to methods for determining prices in response to an inquiry or bid of a customer. The combined teachings of Herz and Kaminsky do not teach or suggest determining prices “upon completion of each sale” as claimed in Claim 26. Therefore, Claim 26 is believed to be in condition for allowance.

Claim 27 depends from Claim 26 and is believed to be allowable for at least the reasons given for Claim 26.

For the forgoing reasons, the application, including Claims 1-3, 5-8 and 20-27, is believed to be in condition for allowance. Early and favorable reconsideration of the case is respectfully requested.

Respectfully submitted,

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